U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32502387

Date: AUG. 20, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a data scientist, seeks to classify himself as an individual of extraordinary ability in the sciences. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record does not establish the Petitioner received a one-time achievement of a major, internationally recognized award. The Director further concluded that the record does not satisfy, in the alternative, at least three of the 10 initial evidentiary criteria. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

> (i) the [noncitizen] has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the [noncitizen] seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the [noncitizen]'s entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the 10 categories listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, published material in certain media, and scholarly articles).

Additionally, if the criteria at 8 C.F.R. § 204.5(h)(3) "do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility." 8 C.F.R. § 204.5(h)(4).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

II. ANALYSIS

As noted above, the Director concluded the record does not establish the Petitioner received a one-time achievement of a major, internationally recognized award. The Director further determined that the record does not satisfy, in the alternative, at least three of the 10 listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). Specifically, although the Director concluded the record satisfies the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (viii), the Director found that the record does not satisfy the criteria at 8 C.F.R. § 204.5(h)(3)(ii), (vi), or (ix), noting that the record does not address the criteria at 8 C.F.R. § 204.5(h)(3)(i), (iii), (v), (vii), and (x). On appeal, the Petitioner reasserts that the record satisfies the criteria at 8 C.F.R. § 204.5(h)(3)(ii), (vi), and (ix), in addition to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (viii). The Petitioner does not assert on appeal that the record satisfies the criteria at 8 C.F.R. § 204.5(h)(3)(i), (iii), (v), (vii), or (x), thereby waiving these criteria. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009) (citing *Greenlaw v. U.S.*, 554 U.S. 237 (2008) (upholding the party presentation rule)). Additionally, the Petitioner does not assert on appeal that the standards at 8 C.F.R. § 204.5(h)(3) do not readily apply to the occupation. *See* 8 C.F.R. § 204.5(h)(4).

A. Initial Evidentiary Requirements

> *Documentation of the [noncitizen's] membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii).

The Director acknowledged that the record establishes the Petitioner is a "fellow member" of the British Computer Society (BCS) and that BCS requires, in relevant part, that fellow members "have made outstanding contributions in their field." However, the Director observed that the record is "vague as to what they consider as a requirement of outstanding contributions, nor does the

information establish that the associations use recognized national or international experts to determine which individuals qualify for membership."

In turn, the Director acknowledged that the record establishes the Petitioner is a "senior member" of the Institute of Electrical and Electronics Engineers (IEEE) and that IEEE requires, in relevant part, that senior members have "shown significant performance over a period of at least five . . . years [through] substantial responsibility or achievement in one or more of IEEE-designated fields." However, the Director observed that IEEE's senior member criteria "does not meet the plain language of outstanding achievement, nor does the information establish that the association uses recognized national or international experts to determine which individuals qualify for membership." Therefore, the Director concluded that the record does not establish that the Petitioner's fellow membership in BCS or his senior membership in IEEE satisfy the plain language requirements of the criterion at 8 C.F.R. § 204.5(h)(3)(ii).

On appeal, the Petitioner asserts that "not every professional association uses the exact phrase 'outstanding achievements' to denote this requirement," and he provides information from BCS and IEEE that he characterizes as synonymous with the criterion at 8 C.F.R. § 204.5(h)(3)(ii). The Petitioner further asserts that BCS and IEEE memberships are judged by national and international experts, and he provides summaries of the association's membership panel requirements.

We need not determine whether the BCS and IEEE membership language is sufficiently synonymous with the criterion at 8 C.F.R. § 204.5(h)(3)(ii) because, as the Director concluded, the record does not establish that either BCS or IEEE memberships are judged by recognized national or international experts. In essence, the Petitioner summarizes that the process of becoming members of the associations' membership panels requires the associations' prior, internal determinations that the individuals in question are experts in their fields, whether "selected from a highly competitive pool" or "personally invited" by others who had been personally invited, before them, etc. The record establishes that the associations' membership panels are exclusive; however, exclusivity is distinguishable from recognition of expertise. The record does not contain probative, objective evidence that those who judge memberships to either BCS or IEEE have recognition of expertise in any particular discipline or field, either nationally or internationally. *See generally*, *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (requiring objective evidence to establish whether an assertion is true). Because the record does not establish that either BCS or IEEE memberships are judged by recognized national or international experts in their disciplines or fields, as determined by probative, objective evidence, it does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(ii).

> *Evidence of the* [*noncitizen's*] *authorship of scholarly articles in the field, in professional or major trade publications or other major media.* 8 C.F.R. § 204.5(h)(3)(vi).

The Director acknowledged that the record contains printouts of three articles attributed to the Petitioner, posted online by differing web portals, along with Similarweb data regarding the web portals. However, the Director determined that the record does not establish how the articles are "scholarly in nature, which require such aspects as research, vetting, reviews of experts, work cited and footnotes." Instead, the Director characterized the articles as "opinion pieces published on websites in the [P]etitioner's field for the general public to read (not learned persons in the field)."

Additionally, the Director determined that none of the web portals are either professional publications, major trade publications, or other major media.

On appeal, the Petitioner reasserts that the web portals that posted his articles require editorial review before publication. The Petitioner also objects that the Director improperly imposed the criteria for scholarly articles "in the academic arena" to the Petitioner's articles outside "the academic arena." The Petitioner also asserts that the record establishes the web portals qualify as major trade publications or other major media. The Petitioner further objects on appeal that the Director "impermissibly conflated the Kazarian two-step analysis."

The Petitioner correctly asserts that the non-academic articles authored by the Petitioner in the record do not implicate the criteria for academic articles described in the USCIS Policy Manual, including "footnotes, endnotes, or a bibliography." *See* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual. Instead, the criterion is that the articles in question "should be written for learned persons in that field," including "all persons having profound knowledge of a field." *See id.*

The record establishes that the Petitioner authored more than one non-academic, scholarly article and that more than one of the media that published the Petitioner's non-academic, scholarly article qualifies as a professional or major trade publication. More specifically, the content of more than article is written for learned persons in the field, rather than laypersons in other fields, and information regarding the media indicate that more than one of those publishers are highly regarded among learned persons in the field. Therefore, the record satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(vi).

> *Evidence that the* [*noncitizen*] *has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.* 8 C.F.R. § 204.5(h)(3)(ix).

The Director acknowledged that the record contains paystubs dated between August 2021 and March 2023, which indicate the Petitioner's biweekly and annualized salary during that period. The Director further acknowledged that "[the Petitioner's] salary is at the higher end of the spectrum," compared to information in the record regarding "the national average salary of data analysts" in general. However, the Director noted that the Petitioner neither has worked during the relevant period, nor proposes to work if the petition were to be approved, as a general data analyst or data scientist. Instead, the record establishes that the Petitioner has worked during the relevant period as "Associate Vice President, Head of Analytics and Data Science for . . . a consumer technology company with a distinguished reputation." Therefore, the Director explained that the relevant salary is not that of data analysts in general but that of "top-level Data Analytics Leaders in the field, since this is where [the Petitioner] claim[s] to stand." The Director ultimately concluded that the record does not establish the Petitioner has commanded a high salary or other significantly high remuneration for services, in relation to others in the field with his level of experience and responsibility and, thus, does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(ix).

On appeal, the Petitioner asserts that an individual's salary need not be compared solely with the top earners in a particular field for the purposes of the criterion at 8 C.F.R. § 204.5(h)(3)(ix), and he summarizes cases regarding professional athletes. He reasserts that his salary satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(ix) because it ranks in the "top 7.09%, i.e., the top few percentage . . . of [d]ata [s]cientists in the U.S."

We withdraw the Director's statements to the extent that they purport the criterion at 8 C.F.R. § 204.5(h)(3)(ix) requires evidence that a noncitizen has commanded a high salary or other significantly high remuneration for services, in relation to others in the field, "over a sustained period of time." Unlike the *Kazarian* analysis, which contemplates sustained national or international acclaim, the criterion at 8 C.F.R. § 204.5(h)(3)(ix) does not impose any particular temporal period for commanding a salary or other significantly high remuneration for services.

Nevertheless, the record does not establish how the Petitioner's salary compares to others with his level of experience and responsibility. As noted above, the Petitioner's salary during the relevant period has been for performing the duties of an "Associate Vice President, Head of Analytics and Data Science." Therefore, the relevant question is not whether the Petitioner has commanded a high salary or other significantly high remuneration for services, in relation to general, inexperienced data scientists with relatively low responsibilities. Instead, the relevant question is whether the Petitioner has commanded a high salary or other significantly high remuneration for services, in relation to other information technology companies' executive leadership whose responsibilities include applied science supervision in addition to administrative functions. The record does not provide sufficient, probative evidence of salaries of those with comparable experience and responsibilities. Therefore, the record does not establish the Petitioner has commanded a high salary or other significantly high remuneration for services, in relation to others in the field material to his salary or other remuneration, as contemplated by the criterion at 8 C.F.R. § 204.5(h)(3)(ix).

B. *Kazarian* Analysis

As addressed above, the record satisfies at least three of the criteria at 8 C.F.R. § 204.5(h)(3), specifically the criteria at 8 C.F.R. § 204.5(h)(3)(iv), (vi), and (viii). We have reviewed the record in its entirety; however, the totality of the material provided does not show sustained national or international acclaim and demonstrate that the Petitioner is among the small percentage at the very top of the field of endeavor. *See Kazarian*, 596 F.3d at 1119-20 (citing section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2)-(3)).

Black's Law Dictionary defines "sustain" as "to support or maintain, especially over a long period of time" or "to persist in making (an effort) over a long period of time." *Sustain*, Black's Law Dictionary (11th ed. 2019). The record is primarily limited to a short period of time before the Petitioner filed the Form I-140, Immigrant Petition for Alien Workers in 2023. For example, although the record establishes that the Petitioner has participated as a judge of the work of others in the same or an allied field of specification for which classification is sought, the record establishes that the Petitioner did so exclusively in 2023, shortly before he filed the Form I-140. Further, the evidence does not set him apart from others in his field, for example, by establishing that he has a consistent history of judging recognized, acclaimed individuals in his field. *See* 8 C.F.R. § 204.5(h)(2).

Similarly, although the record establishes that the Petitioner has authored more than one non-academic scholarly article in the field and more than one of the media that published those articles qualify as a professional or major trade publication, all of the articles were published in 2023, shortly before the Petitioner filed the Form I-140. Moreover, the record does not establish that any of the Petitioner's articles have received particular prestige or acclaim, beyond merely being of the type of articles contemplated by the criterion at 8 C.F.R. § 204.5(h)(3)(vi).

Likewise, although the record establishes that the Petitioner has performed a leading or critical role for an organization or establishment that has a distinguished reputation, a letter from the Petitioner's former supervisor establishes that "[the Petitioner] was promoted to his leadership position in 2021." The record does not establish the specific date within 2021 when the Petitioner was promoted; however, given that he "was invited to work at Amazon in 2021" prior to his promotion to the leadership position in question, the promotion appears to coincide with the paystubs in the record dated August 2021. Although the criterion at 8 C.F.R. § 204.5(h)(3)(viii) does not require a minimum period of time or a minimum number of organizations or establishments that have a distinguished reputation, the record does not establish that the Petitioner worked as "Associate Vice President, Head of Analytics and Data Science," for the particular employer beyond the period between August 2021 and March 2023—the period established by the paystubs, discussed above.

Participating as a judge of the work of others within the same calendar year in which the Petitioner filed the Form I-140, writing articles published within the same calendar year in which the Petitioner filed the Form I-140, and working in a leading or critical role for the particular employer between August 2021 and March 2023 do not demonstrate sustained national or international acclaim and that the Petitioner is among the small percentage at the very top of the field of endeavor. *See Kazarian*, 596 F.3d at 1119-20 (citing section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2)-(3)). The information in the record primarily limited to a short period of time before the petition filing date does not establish how the Petitioner is among the small percentage at the very top of the field of endeavor, beyond merely being one of many judges of the work of others, one of many authors of scholarly articles, and one of many individuals with a leading or critical role for an organization or establishment that has a distinguished reputation. *See id.*

In turn, even if the non-qualifying evidence established the requisite national or international acclaim, which it does not for the reasons discussed above, it would not demonstrate sustained acclaim, which is the focus of the *Kazarian* analysis. The Petitioner's memberships in BCS and IEEE are dated June and February 2023, respectively, which would not demonstrate sustainment at the time of filing later in 2023, if those memberships were to establish the requisite level of acclaim. *See id.* In turn, the evidence in the record regarding the Petitioner's salary is dated between August 2021 and March 2023. Such limited information regarding salary or remuneration during one full calendar year, and portions of two other calendar years, would not demonstrate sustainment, if it were to establish the requisite level of acclaim. *See id.* Similar to the discussion above, even if the record established that the Petitioner is a member of a qualifying association, it would not establish how the Petitioner is among the small percentage at the very top of the field of endeavor, beyond merely being one of many members of qualifying associations. *See id.*

Because the totality of the material provided does not show sustained national or international acclaim and demonstrate that the Petitioner is among the small percentage at the very top of the field of endeavor, the Petitioner is not eligible for the requested classification. *See Kazarian*, 596 F.3d at 1119-20 (citing section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2)-(3)).

III. CONCLUSION

The evidence meets at least three of the 10 criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). However, the totality of the record does not support a conclusion that the Petitioner has established the acclaim and

recognition required for the classification sought. *See Kazarian*, 596 F.3d at 1119-20. The Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. The record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and that he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act; *see also* 8 C.F.R. § 204.5(h)(2).

ORDER: The appeal is dismissed.